Federal Communications Commission

Washington, DC 20554

In Re: DELETE, DELETE,
DELETE

GN Docket No. 25-133

Comments of Richard A. Golden

Delete the $35 Application fee for the Amateur Radio Service.

SUMMARY

Delete: The $35 application fee for Amateur Radio Service licenses[1] because:

- **Unlawful**: The fee is unlawful because it violates the exemption language provisions of the RAY BAUM'S Act.[2] [3] for non-commercial station license applications. Because of the Supreme Court's abolition of the so-called *Chevron doctrine,* the FCC has now become a target for litigation. Losses facing the FCC include plaintiffs' attorneys' fees as allowed by the Equal Access to Justice Act. Deleting the fee can stop such litigation.
- **Costs**: The $35 application fee represents almost zero percent (0%) of the cost "to process" an application. It represents almost 100% of the cost of collecting the fee. It benefits no one other than to provide employment for people who are hired to collect the fee.

[1] . 47 CFR § 1.1102. SCHEDULE OF CHARGES FOR APPLICATIONS AND OTHER FILINGS IN THE WIRELESS TELECOMMUNICATIONS SERVICES.
[2] Pub. Law 115-141, 132 Stat. 1082 that amended and reenacted 47 U.S.C. § 158
[3] *See*, particularly, 47 U.S.C. 158(d)(2), prohibiting fees for non-commercial license applications

DISCUSSION

Background.

The Amateur Radio Service is a non-commercial radio service that pre-dates the 1927 Radio Act[4]. It provides virtually millions of dollars of services to the public at no cost. It regularly provides communications services when conventional services have failed. The supplanting of services during failure of inter-agency communications during the 9/11 attacks is one of the more high-profile examples. Prior to 2020, license applications in this service were processed without a fee.

The $35 fee is Unlawful.

In 2018 Congress adopted the RAY BAUM'S ACT.[5]. The Act required the Commission to establish a schedule of fees to recoup the costs "to process" applications. The Act, in clear language, prohibited application fees for non-commercial station licenses. 47 USC 158(d):

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``(d) Exceptions.--
                ``(1) Parties to which fees are not applicable.-
    -The application fees established under this section shall
    not be applicable to
            ``(A) a governmental entity;
            ``(B) a nonprofit entity licensed in the Local
                Government, Police, Fire, Highway Maintenance,
                Forestry-Conservation, Public Safety, or Special
                Emergency Radio radio services; or
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[4] See, FCC Docket 99-412.
[5] Pub. Law 115-141, 132 Stat. 1082 that amended and reenacted 47 U.S.C. § 158

> ``**(C) a noncommercial radio station or noncommercial television station.** (emphasis supplied).

Amateur Radio Service station licenses are such non-commercial stations. They are defined by Part 97. They are literally for a "voluntary **noncommercial** communications service." (emphasis supplied). 47 C.F.R. §§ 97.1 (a), 97.5(b). Unlike other licenses issued by the Commission these licenses are "**station** license grants." § 97.5(b). These license grants are for both **radio** and **television** stations.[6]

Thus, an application for license under Part 97 is an application for both a *noncommercial radio station* and a *noncommercial television station*.

The legality of the $35 fee had been briefly examined by the Commission in its earlier rulemaking proceeding.[7] At that time a so-called Chevron doctrine existed[8]. The doctrine provided agencies with a favorable presumption as to their interpretations of statutes.[9] The discussion in that proceeding examined the phraseology of the statute and,

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[6] 47 C.F.R. § 97.305. AUTHORIZED EMISSIONS.

[7] IN THE MATTER OF AMENDMENT OF THE SCHEDULE OF APPLICATION FEES SET FORTH IN SECTIONS 1.1102 THROUGH 1.1109 OF THE COMMISSION'S RULES, *REPORT AND ORDER, ADOPTED DECEMBER 23, 2020,* MD Docket No. 20-270 R.

[8] *That doctrine was established in Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc., 467 U. S. 837 (1984).*

[9] **What it is:**
The Chevron doctrine, also known as "Chevron deference," was a legal principle that required federal courts to defer to the interpretations of statutes made by the federal agencies that administer those statutes, especially when those interpretations were reasonable, and the statute was ambiguous.

- **Two-Step Framework:**

The doctrine operated under a two-step framework:

  - **Step 1:** The court must first determine if Congress has directly addressed the specific question at issue in the statute. If the statute is clear, the court must enforce the law as written.
  - **Step 2:** If the statute is ambiguous or silent on the matter, the court must then defer to the agency's interpretation of the statute, as long as that interpretation is reasonable.

- **Rationale:**

The rationale behind Chevron deference was that agencies have expertise in their respective fields and were better equipped to interpret and implement complex laws, particularly when those laws are ambiguous or leave gaps.

at least impliedly, it suggested that the Commission was entitled to a favorable presumption that it could, by rule, limit the scope of the statute's exemption provisions.

A *subsequent* development occurred in 2024.

On June 28, 2024, the United States Supreme court rendered its decision in *Loper Bright Enterprises v. Raimondo* [10] overruling the Chevron doctrine. *Loper*

> "Held: The Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous; Chevron is overruled. Pp. 7–35."[11]

Without the *Chevron doctrine*, and with clear exemption language being in the statute, the $35 fee is now a target for judicial attack. To sustain the fee, the Commission will be presented with a significant obstacle. It will need to assert that Congress left a gap om subparagraph "(C)" because did not know how to use the word "broadcast" when writing the statute's *exemption* language for non-commercial stations. Thus, ostensibly, the Commission would need to claim that it could still, by rule, insert the word missing from the statute. This comes with risks.

The Commission will be faced with a need to make an assertion that the statute had an omission. In other words, the Commission will assert that Congress did *not know* how to use the word "broadcast" when it wrote the statute. This would be wrong.

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[10] 603 U.S. 369 (more), 144 S. Ct. 2244 (2024).
[11] Slip opinion, Syllabus.

Congress does know how. And we know this because Congress has told us so. When it wants, it has used and continues to use the word "broadcast." We see this repeatedly in Title 47 of the United States Code.

Congress' omission of the word "broadcast" was deliberate. It wanted the fee exemption to apply to all non-commercial stations.

If this proceeding does not amend the rule to eliminate the fee, and with the now demise of the Chevron doctrine, future litigation will be just a matter of time. The $35 fee will be challenged. *Quaere*: will that litigation result with a court order merely striking down future collection efforts, or will it operate retroactively? More than 742,000 Amateur Radio Service station licenses are now active. With few exceptions, each license requires renewal every 10 years. As a result, and using simple math, every 10 years the Commission will ostensibly have been overcharging applicants upwards from $25,970,000.00.

The Commission's prevailing in such litigation is doubtful. Not only would the Commission incur significant expenses defending the action, but the Commission would be faced with paying the other sides' attorneys' fees that could be awarded pursuant to the Equal Access to Justice Act.[12]

[12] The Equal Access to Justice Act (EAJA), enacted in 1980, authorizes the award of attorney's fees and other expenses to certain individuals, small businesses, and other entities who prevail against the federal government in judicial proceedings and certain adversary adjudications when the government's position is not substantially justified. The stated purpose of EAJA, among other things, is to "diminish the deterrent effect of seeking review of, or defending against, governmental action by providing" for the award of certain costs and fees against the United States.

Costs

Even if the illegality of the fee were to be ignored, the $35 fee should be deleted on a *cost-benefit-consideration*. Evidence presented to the Commission in its 2020 rulemaking proceeding showed that virtually zero costs were incurred by the Commission "to process" applications in the Amateur Radio Service. Almost all costs "to process" were borne by volunteers in a licensing system the Commission created. *See*, 47 CFR § 97.3 (49 and 50), and 47 CFR Subpart F, § 97.501 – 97.527. The Commission's involvement is almost entirely automated – allowing the Commission "to process" a license application without any human involvement. It is processed in a fraction of a second.

Conversely, the costs of "collection" are borne by the Commission. For the Amateur Radio Service's license applications, the $35 fee represents almost 100% of the cost of collection. It benefits no one other than the people the Commission needs to hire to collect the fees.

N.B. 47 U.S.C. 158(d)(2):

> 2) **COST OF COLLECTIONS.** If, in the judgment of the commission, the cost of collecting an application fee established under this section would exceed the amount collected, the Commission may by rule eliminate such fee.

CONCLUSION

Save the taxpayers' money. Delete the $35 station license application fee for station license applications in the Amateur Radio Service: 47 CFR § 1.1102. SCHEDULE OF CHARGES FOR APPLICATIONS AND OTHER FILINGS IN THE WIRELESS TELECOMMUNICATIONS SERVICES.

Dated: April 6, 2025 .

Respectfully submitted:

/s/ Richard A. Golden

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